

### **Remarks/Arguments**

In the present application, Claims 1 and 3-26 are pending. Claims 1, 3-5, 7, 8, 12-14, 16, 17, 19 and 22-26 have been rejected. Claims 6, 9-11, 15, 18, 20 and 21 have been objected to as dependent upon a rejected base claim, but otherwise indicated to be allowable. Applicants thank the Examiner for this indication of allowability.

By this amendment, claims 1, 3, 16 and 26 have been amended. No new matter has been added to the prosecution of this application. For at least the reasons stated below, Applicants assert that all claims are in condition for allowance.

#### **I. The Generation of National Retail Traffic Index Data Provides a Useful Tool**

As set forth in the specification, the present invention provides a system and method to generate traffic index data. Once generated, this traffic index data provides a measure or indication related to the traffic at the site being monitored. This measure or indication includes some component of pedestrian traffic data, but also incorporates non-traffic data. Generating the traffic index data in this manner provides a metric which allows users to analyze or judge a particular site or location by comparing this data with data from other locations. This provides users with tools not previously available.

As suggested above, the generation of national retail traffic index information provides valuable tools for merchants, advertisers, managers, landlords, and others. This information combines traffic data with non-traffic data to provide users (merchants, advertisers, landlords, leasing agents, etc.) with information about a particular location. Generally speaking, this invention collects both traffic data and non-traffic data, and produces national retail traffic index data which can be accessed via a data mart.

As set out in the specification, the traffic index data is developed/calculated based on mathematical algorithms to produce usable information for a user. See, p.15, lines 17-25.

An objective comparison of information related to multiple locations is then possible. See, specification, p. 2, lines 10-20. For example, the traffic index data may correlate pedestrian traffic, location/site size, location/site age, sales, and region. See, specification, p. 1, line 30 – p. 2, line 1. Based on these correlations a user can then review information about a selected location as compared to generalized information as desired. Naturally, other combinations are possible. *Id.*, p. 2, lines 1-9.

Reviewing the amended claims, it can be seen that they include, *inter alii*:

- (1) a traffic database for storing the pedestrian traffic data;
- (2) at least one database for storing non-traffic related data;
- (3) a view creator for generating national retail traffic index data by processing the data stored in these databases, the traffic index data providing a metric or measure related to traffic data and non-traffic data at the various sites; and
- (4) a national retail traffic index data mart for storing the national retail traffic index data .... accessible by users in an effort to determine a user relevant national traffic index.

As outlined below, this combination of elements is not suggested by the cited prior art. Perhaps more importantly, the cited references do not discuss or suggest the creation of traffic index data as outlined above. This ability to produce such data fills a void that previously existed for these users. Further, the cited references are not involved in accomplishing the same goals and objectives as the claimed invention.

## **II. The § 103 Rejections**

Claims 1, 3-5, 7, 8, 12-14, 16, 17, 19 and 22-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Conrad et al. (U.S. Patent Number 5,465,115), in view

of Miura (U.S. Patent Number 5,485,347), in view of Dedrick (U.S. Patent Number 5,696,965) and in further view of Montero (U.S. Patent No. 6,133,912). Due to a lack of teaching and a lack of any motivation to combine these references, applicant submits that these rejections are unsupported and inappropriate.

In summary, the Examiner asserts that: (1) Conrad discloses *a pedestrian traffic indexing system comprising a plurality of traffic monitors at a plurality of provider sites*, (2) Miura discloses *a server connected to said traffic monitors to receive pedestrian traffic data . . . ; a traffic database for storing said pedestrian traffic data*; (3) Dedrick discloses *at least one database for storing non-traffic related data; generating national retail traffic index data by processing data stored in the at least one database for storing non-traffic related data; and a national retail traffic index data mart for storing the national retail traffic index data*; and (4) Montero disclosed *a view creator for generating national retail traffic data by processing data stored . . . and a data communications connection for transferring data among the [databases], wherein a user can access the national traffic index data mart via the data communications connection*. See Office Action, pp. 2-5 (¶¶ 6-12). In light of this alleged teaching, the examiner concludes that the invention set forth in the claims listed above is obvious and thus unpatentable.

Applicant submits that the listed references do not provide sufficient teaching to support the Examiner's conclusion. In addition, the required motivation or suggestion to combine these references is not present. Thus, the rejections under 35 U.S.C. § 103 are unfounded and should be removed.

As a starting point, comments regarding each of the cited references are outlined below:

**Conrad et al. Simply Provides Counting**

As its title suggests, Conrad et al. does relate to traffic monitoring for retail establishments. Simply stated, Conrad et al. describes one method and approach for monitoring pedestrian traffic, as people move into and out of an establishment. The system in Conrad et al. is more specifically directed towards the cost effective and efficient counting of pedestrian traffic, and the generation of traffic count values. Again, this is one approach to the traffic monitoring as contemplated by the present invention.

Turning now to the presently claimed invention, the monitoring of pedestrian traffic and the creation of traffic data is clearly one element of the claims. In the specification, the Applicants contemplated the use of Conrad et al. as one potential device or method for monitoring pedestrian traffic. See, specification, p. 5, lines 14-17; p.7, lines 7-9. However, Conrad et al. is configured to simply produce traffic counts and either communicate or store this information. Again, this is only one portion of the presently claimed invention. As conceded by the Examiner, many remaining elements are clearly omitted from the teaching of Conrad et al.

**Miura Is Merely Background and Not Related**

As indicated in the text of this reference, Miura provides a riding situation guiding management system for use in passenger trains and other transportation applications. Generally speaking, the passengers are counted and information is derived from these counts. All measurement is done at doorways and entrances going in and out of the trains however, providing for the captive measurement of people moving into and out of an enclosed space. From this, manipulations and calculations can be done regarding availability of seats and/or space on the train for use at subsequent stations and/or stops. Generally stated, this system is "managing the cattle as they are loaded in the truck".

The invention of Miura is very unrelated and different from the traffic measurement technology utilized in applicant's invention. More significantly, Miura is not related to the development of index data in any way. As discussed numerous times throughout the applicant's specification, traffic measurement involves an analysis related to the flow of traffic through or past a specified location. This location is not limited to entryways, doorways or other related structure. It is likely and intended that the measurement of traffic be expanded beyond doorways, entry and exits in order to provide more meaningful information to subsequent users. In the retail mall application, this may include particular corridors or traffic flow areas that exist within the mall structure. Further, this may involve the monitoring of loosely defined spaces within a larger area. Additionally, while Miura does correlate passenger flow with time, it does not illustrate or discuss the combination of "traffic" data with any other information. This is a significant part of our client's invention, and appears to be overlooked by the examiner.

**Dedrick does not teach several elements.**

Applicants respectfully disagree with the Examiner's characterization of Dedrick and assert that it does not provide sufficient teaching to support the Examiner's position. Specifically, Applicants assert that Dedrick does not teach or suggest the use of either pedestrian traffic data, or non-traffic related data to generate the national retail traffic index data, which is then stored on a data mart. These shortcomings, however, are more significant than suggested by the Examiner.

Dedrick is best characterized as a client activity monitor, which keeps track of computer user activity and characteristics. As a result of this activity, the system of Dedrick is capable of customizing information for a user when accessed via the computer system. Other than the general monitoring of activity, Dedrick has very little in common with the present invention. While there is discussion regarding general computer system concepts,

Dedrick really provides no teaching relevant to the pedestrian traffic monitoring and index data creation concepts of the present invention.

Contrary to the Examiner's allegation, Dedrick does not deal with index data, as contemplated by the present invention. Dedrick does include a "index database 35", however this is nothing more than electronic catalog. See col. 10, lines 48-49. Nothing contained in Dedrick relates to the generation of index data, as contemplated by the present invention. As such, Dedrick is only remotely related and provides no basis for rejecting the claimed invention.

**Montero Only Deals with General Computer Concepts**

Lastly, Montero was cited as disclosing a view creator. Examining Montero, the cited passages relate simply to the storage of profile databases, and the communication of this information via a network. While generally applicable to the computer system utilized by the present invention, the concept of Montero is not related to traffic data or the generation of index data, as outlined and claimed in the present application. As such, Montero provides general background knowledge, however, does not add specific teaching relevant to the present invention.

**Fox Does not Provide Sufficient Teaching**

The Examiner has further referenced Fox as teaching other claim elements related to traffic monitoring systems. While Fox generally relates to traffic monitoring, its concepts and general focuses are simply much different than that of the present invention. More specifically, Fox is specifically directed towards the correlation of weather data with business forecasting activities. Some of this business forecasting involves the monitoring of traffic along with consumer activity (i.e., purchases). Fox, however, does not involve the monitoring of traffic data for specific purposes of creating index data which is available to users via a data mart.

**The Claimed Invention is Not Obvious**

Once again the concept of the present invention initially relates to the generation and storage of both a traffic database and a non-traffic database. This information is then utilized to generate national retail traffic index data. This index data is made available at a data mart, which is accessible by users. It is significant to point out that this index data is not simply a "catalog" or "table of contents" as may often be considered when the term "index" is utilized. Rather, the index data of the present invention provides a score or rating. As stated, the index is a comprehensive overview of nation wide retail traffic information. See specification, p.4, lines 23-36. This concept is not taught or suggested by any of the references.

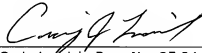
Further, given the diverse nature of the various references, it is pure speculation to suggest that these references would be combined to render obvious the present invention. As discussed above, each cited reference is primarily related to a very different focus. An inventor would not be inclined to consult these various references when developing the presently claimed invention. Further, there is nothing in the various references to suggest their combination. In the Office Action, the Examiner has simply indicated that the references are in the same field of endeavor. While this conclusion itself is questionable, no reasons or basis for the combination of these references is given.

In addition to the details discussed above, the application includes several dependent claims containing details not addressed by the Examiner. Specifically, these details specify that the databases for non-traffic related data are: a demographics database for storing census demographics, a profiles database for storing site profiles (associated to a set of provider sites) and corporate profiles (associated to a set of corporations), and a customer database for storing sales data. When combined with the details of the independent claims, these details further differentiate the present invention from the prior art.

### III. Summary

Applicants submit that all pending claims are allowable over the art of record and respectfully requests that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7387. If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees including fees for any extension of time, to Deposit Account No. 50-1901 (Docket 14862-323).

Respectfully submitted,



Craig Lervick, Reg. No. 35,244  
Customer No. 34205  
OPPENHEIMER WOLFF & DONNELLY LLP  
45 South Seventh Street, Ste. 3300  
Minneapolis, MN 55405  
Phone: 612-607-7387  
Fax: 612-607-7100  
E-mail: CLerick@oppenheimer.com